

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

LILA WISEMAN,
Executrix of the Estate of
EMMA LEE CASSITY,

Plaintiffs,

v.

Civil Action No. 2:12-2208

RALEIGH GENERAL HOSPITAL, LLC and
HANIBAL MAHDI, M.D. and
LAMBERTO MARAMBA, M.D. and
BOSE S. MIKKILINENI, M.D.

Defendants.

UNITED STATES OF AMERICA

Movant.

MEMORANDUM OPINION & ORDER

Pending are the United States' motions to (1) dismiss
Lamberto Maramba, M.D. from this civil action and substitute the
United States and (2) to dismiss this civil action against Dr. Maramba
for failure to exhaust administrative remedies, both filed June 22,
2012.

This medical malpractice action was filed in the Circuit
Court of Kanawha County, West Virginia, on May 10, 2012. On June
21, 2012, the United States removed the case to the Southern District
of West Virginia, invoking the court's federal question
jurisdiction. The next day, the United States and Dr. Maramba moved

to substitute and dismiss on the grounds specified above.

On July 17, 2012, plaintiff and Dr. Maramba filed a joint stipulation regarding these motions. According to the stipulation, plaintiff was unaware that Dr. Maramba was an employee of the United States, by virtue of which the claims alleged in the complaint against Dr. Maramba would be covered by the Federal Tort Claims Act ("FTCA"). The parties further stipulate that plaintiff has not yet filed an administrative claim as required by the FTCA, and therefore, plaintiff has unknowingly neglected to exhaust her administrative remedies.

Pursuant to the parties' agreement, it is accordingly ORDERED that:

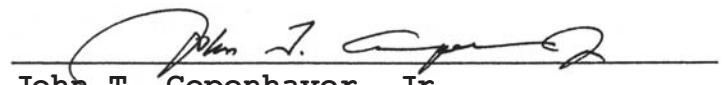
1. The United States be, and it hereby is, substituted as defendant in place of Lamberto Maramba, M.D.; and
2. This civil action be, and it hereby is, dismissed without prejudice as it relates to the United States of America, inasmuch as plaintiff failed to exhaust her administrative remedies as required under the FTCA.

The court observes that, following the dismissal of the United States, the only remaining claims in the complaint sound in

state law against non-diverse defendants. Accordingly, this court is without jurisdiction, and it is ORDERED that this case be, and it hereby is, remanded to the Circuit Court of Kanawha County.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record and any unrepresented parties.

ENTER: August 9, 2012


John T. Copenhaver, Jr.
United States District Judge